

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

OTIS BROOKS, :
: Petitioner, : Case No. 5:08-CV-90021
: v. : Case No. 5:01-CR-14(HL)
UNITED STATES OF AMERICA, :
: Respondent. :

ORDER

Petitioner Otis Brooks has filed a Notice of Appeal (Doc. 154) from this Court's Order entered on October 26, 2009, denying Brooks' Motion Pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure. A Motion for Certificate of Appealability has been construed from the Notice of Appeal. See Edwards v. United States, 114 F.3d 1083 (11th Cir. 1997).

Pursuant to 28 U.S.C. § 2253, an appeal may not be taken to the court of appeals from the final order in a proceeding under 28 U.S.C. § 2255, unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C.A. § 2253(c)(1)(B). The United States Court of Appeals for the Eleventh Circuit has construed the certificate of appealability requirement to extend to "the appeal of any denial of a Rule 60(b) motion for relief from a judgment in a [28 U.S.C.] § 2254 or [28 U.S.C.] § 2255 proceeding" Jackson v. Crosby, 437 F.3d 1290, 1294-95 (11th Cir. 2006) (quotation omitted).

Therefore, before Brooks can take an appeal from the Order denying his Rule 60(b) motion, a circuit justice or judge must issue a certificate of appealability ("COA"). The Eleventh Circuit has determined that the district courts must consider and rule upon the propriety of issuing a COA before a request for COA will be acted on by the court of appeals. Edwards, 114 F.3d at 1084.

A COA may issue pursuant to § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C.A. § 2253(c)(2). To make a substantial showing the petitioner must show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000) (internal quotation omitted).

For the reasons previously set out in the Court's Orders, the Court finds that reasonable jurists could not find that a dismissal of Brooks' claims was debatable or wrong. Therefore, the Motion for Certificate of Appealability, construed from the Notice of Appeal, is denied.

SO ORDERED, this the 7th day of December, 2009.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

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